

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LAMIS ALKHARSA,

ANSWER TO COMPLAINT

Plaintiff,

Docket No.: 08-CIV-4254(JGK)

- against -

NEW HANG DAR CONSTRUCTION, INC., JIMMY
HO, BRIAN ILL DEVELOPMENT, LLC, BRIAN ILL,
MADALEX, LLC, SCOTT EDELSTEIN, ALEX TEREZ,
EMPIRE MANAGEMENT AMERICA CORP. a/k/a
EMPIRE MANAGEMENT, and FRED SHALOM,

Defendants.

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The defendants, **NEW HANG DAR CONSTRUCTION, INC. and JIMMY HO**, by
their attorneys, **MARKS, O'NEILL, O'BRIEN & COURTNEY, P.C.**, answering the
complaint of the plaintiff herein, respectfully allege upon information and belief:

COMPLAINT

JURISDICTION

1. Denies knowledge or information sufficient to form a belief as to the truth of each
and every allegation contained in the paragraphs of the complaint designated as follows:

“1”, “5”, “6”, “7”, “8”, “9” and “10”.

and respectfully refers all questions of law raised therein to the trial court.

2. Admits each and every allegation contained in the paragraph of the complaint designated as follows:

“2”

3. Denies each and every allegation contained in the paragraphs of the complaint designated as follows:

“3” and “11”

4. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraph of the complaint designated as follows:

“4”

PARTIES

5. Denies each and every allegation contained in the paragraph of the complaint designated as follows:

“12”

and respectfully refers all questions of law raised therein to the trial court.

6. Admits each and every allegation contained in the paragraph of the complaint designated as follows:

“13”

7. Denies each and every allegation contained in the paragraphs of the complaint designated as follows:

“14”, “15”, “16” and “17”

8. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraphs of the complaint designated as follows:

**“18”, “19”, “20”, “21”, “22”, “23”, “24”, “25”, “26”, “27”, “28”, “29”, “30”, “31”, “32”,
“33”, “34”, “35”, “36”, “37” and “38”**

and respectfully refers all questions of law raised therein to the trial court.

INCIDENT

9. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraph of the complaint designated as follows:

“39”

and respectfully refers all questions of law raised therein to the trial court.

10. Denies each and every allegation contained in the paragraph of the complaint designated as follows:

“40”

COUNT I: PLAINTIFF VS. NEW HANG DAR CONSTRUCTION, INC.

11. In response to paragraph **“41”** of plaintiffs’ complaint, defendant repeats, reiterates and realleges each and every response to paragraphs **“1”** through **“40”** of the complaint heretofore made with the same force and effect as if fully set forth at length herein.

12. Denies each and every allegation contained in the paragraphs of the complaint designated as follows:

“42”, “43”, “44”, “45”, “46”, “47”, “48”, “49”, “50”, “51”, “52”, “53” and “54”

COUNT II: PLAINTIFF VS. JIMMY HO

13. In response to paragraph **“55”** of plaintiffs’ complaint, defendant repeats, reiterates and realleges each and every response to paragraphs **“1”** through **“54”** of the complaint heretofore made with the same force and effect as if fully set forth at length herein.

14. Deny each and every allegation contained in the paragraphs of the complaint designated as follows:

“56”, “57”, “58”, “59”, “60”, “61”, “62”, “63”, “64”, “65”, “66”, “67” and “68”

COUNT III: PLAINTIFF VS. BRIAN ILL DEVELOPMENT, LLC

15. In response to paragraph “69” of plaintiffs’ complaint, defendant repeats, reiterates and realleges each and every response to paragraphs “1” through “68” of the complaint heretofore made with the same force and effect as if fully set forth at length herein.

16. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraphs of the complaint designated as follows:

“70”, “71”, “72”, “73”, “74”, “75”, “76”, “77”, “78”, “79”, “81” and “82”

and respectfully refers all questions of law raised therein to the trial court.

17. Deny each and every allegation contained in the paragraph of the complaint designated as follows:

“80”

COUNT IV: PLAINTIFF VS. BRIAN ILL

18. In response to paragraph “83” of plaintiffs’ complaint, defendant repeats, reiterates and realleges each and every response to paragraphs “1” through “82” of the complaint heretofore made with the same force and effect as if fully set forth at length herein.

19. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraphs of the complaint designated as follows:

“84”, “85”, “86”, “87”, “88”, “89”, “90”, “91”, “92”, “93”, “95” and “96”

and respectfully refers all questions of law raised therein to the trial court.

20. Deny each and every allegation contained in the paragraph of the complaint designated as follows:

“94”

COUNT V: PLAINTIFF VS. MADALEX, LLC

21. In response to paragraph “97” of plaintiffs’ complaint, defendant repeats, reiterates and realleges each and every response to paragraphs “1” through “96” of the complaint heretofore made with the same force and effect as if fully set forth at length herein.

22. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraphs of the complaint designated as follows:

“98”, “99”, “100”, “101”, “102”, “103”, “104”, “105”, “106”, “107” and “109”

and respectfully refers all questions of law raised therein to the trial court.

23. Deny each and every allegation contained in the paragraph of the complaint designated as follows:

“108”

COUNT VI: PLAINTIFF VS. SCOTT EDELSTEIN

24. In response to paragraph “111” of plaintiffs’ complaint, defendant repeats, reiterates and realleges each and every response to paragraphs “1” through “110” of the complaint heretofore made with the same force and effect as if fully set forth at length herein.

25. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraphs of the complaint designated as follows:

“112”, “113”, “114”, “115”, “116”, “117”, “118”, “119”, “120”, “121”, “123” and “124”
and respectfully refers all questions of law raised therein to the trial court.

26. Deny each and every allegation contained in the paragraph of the complaint designated as follows:

“122”

COUNT VII: PLAINTIFF VS. ALEX TEREZ

27. In response to paragraph “125” of plaintiffs’ complaint, defendant repeats, reiterates and realleges each and every response to paragraphs “1” through “124” of the complaint heretofore made with the same force and effect as if fully set forth at length herein.

28. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraphs of the complaint designated as follows:

“126”, “127”, “128”, “129”, “130”, “131”, “132”, “133”, “134”, “135”, “137” and “138”
and respectfully refers all questions of law raised therein to the trial court.

29. Deny each and every allegation contained in the paragraph of the complaint designated as follows:

“136”

COUNT VIII: PLAINTIFF VS. EMPIRE MANAGEMENT AMERICA CORP. AKA
EMPIRE MANAGEMENT

30. In response to paragraph **“139”** of plaintiffs’ complaint, defendant repeats, reiterates and realleges each and every response to paragraphs **“1”** through **“138”** of the complaint heretofore made with the same force and effect as if fully set forth at length herein.

31. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraphs of the complaint designated as follows:

“140”, “141”, “142”, “143”, “144”, “145”, “146”, “147”, “148”, “149”, “151” and “152”
and respectfully refers all questions of law raised therein to the trial court.

32. Deny each and every allegation contained in the paragraph of the complaint designated as follows:

“150”

COUNT IX: PLAINTIFF VS. FRED SHALOM

33. In response to paragraph “153” of plaintiffs’ complaint, defendant repeats, reiterates and realleges each and every response to paragraphs “1” through “152” of the complaint heretofore made with the same force and effect as if fully set forth at length herein.

34. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraphs of the complaint designated as follows:

“154”, “155”, “156”, “157”, “158”, “159”, “160”, “161”, “162”, “163”, “165” and “166”
and respectfully refers all questions of law raised therein to the trial court.

35. Deny each and every allegation contained in the paragraph of the complaint designated as follows:

“164”

**A FIRST SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

36. That any damages, injury and/or injuries sustained by plaintiff was caused in whole or part by the culpable conduct and fault attributable to the plaintiff, including, but not limited to, contributory negligence and/or want of care, and/or the plaintiff’s assumption of the risk, and the amount recovered, if any, should be diminished pursuant to CPLR 1412 by the

proportion which the culpable conduct attributed to the plaintiff's bear to the culpable conduct which caused the damages, if any.

**AS AND FOR A SECOND SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

37. The complaint fails to state a cause of action upon which relief can be founded.

**AS AND FOR A THIRD SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

38. If plaintiff was caused to sustain damages at the time and place set forth in the plaintiff's complaint it was due to the culpable conduct of person or persons presently unknown.

**AS AND FOR A FOURTH SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

39. This Court has no jurisdiction over the person of the defendant and such defect has not been waived by defendants and is preserved.

**AS AND FOR A FIFTH SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

40. The liability of these answering defendants is limited by law under the terms of Article Sixteen of the CPLR.

**AS AND FOR A SIXTH SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

41. That any and all risks, hazards and dangers were open, obvious and apparent, natural and inherent and known or should have been known by the plaintiff herein and that plaintiff assumed all such risks, hazards and effects.

**AS AND FOR A SEVENTH SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

42. That if plaintiff sustained the injuries complained of in the manner alleged, said injuries were caused by the negligence of parties over whom the answering defendant was not obligated to exercise supervision or control.

**AS AND FOR A EIGHTH SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

43. That any award recovered by plaintiff must be reduced by the receipt of collateral source payments.

**AS AND FOR A CROSS-CLAIM AGAINST DEFENDANTS, BRIAN ILL
DEVELOPMENT, LLC, BRIAN ILL, MADALEX, LLC, SCOTT EDELSTEIN, ALEX
TEREZ, EMPIRE MANAGEMENT AMERICA CORP. a/k/a EMPIRE MANAGEMENT,
and FRED SHALOM, AND AS A BASIS FOR AN AFFIRMATIVE DEFENSE, THE
DEFENDANT,
NEW HANG DAR CONSTRUCTION, INC. and JIMMY HO, ALLEGES:**

21. That if the plaintiff was caused to sustain damages at the time and place set forth in the plaintiff's complaint through any carelessness, recklessness, negligence and/or breach of warranty other than the plaintiff's own carelessness, recklessness and negligence, said damages were sustained by reason of the carelessness, recklessness and negligence and/or acts of omission or commission and/or breach of contract by the defendants, **BRIAN ILL DEVELOPMENT, LLC, BRIAN ILL, MADALEX, LLC, SCOTT EDELSTEIN, ALEX TEREZ, EMPIRE MANAGEMENT AMERICA CORP. a/k/a EMPIRE MANAGEMENT, and FRED SHALOM**, their agents, servants and/or employees; and if any judgment is recovered herein by the plaintiff against the defendants, **NEW HANG DAR CONSTRUCTION, INC. and JIMMY HO**, it will be damaged thereby, and the defendants, **BRIAN ILL DEVELOPMENT, LLC, BRIAN ILL, MADALEX, LLC, SCOTT EDELSTEIN, ALEX TEREZ, EMPIRE**

MANAGEMENT AMERICA CORP. a/k/a EMPIRE MANAGEMENT, and FRED SHALOM, is or will be responsible therefore in whole or in part.

22. That by reason of the foregoing, the defendants, **BRIAN ILL DEVELOPMENT, LLC, BRIAN ILL, MADALEX, LLC, SCOTT EDELSTEIN, ALEX TEREZ, EMPIRE MANAGEMENT AMERICA CORP. a/k/a EMPIRE MANAGEMENT, and FRED SHALOM**, will be liable to the defendant, **NEW HANG DAR CONSTRUCTION, INC. and JIMMY HO**, in the event and in the full amount of a recovery herein by the plaintiff or alternatively, for that proportion thereof caused by the relative responsibility of the defendants, **BRIAN ILL DEVELOPMENT, LLC, BRIAN ILL, MADALEX, LLC, SCOTT EDELSTEIN, ALEX TEREZ, EMPIRE MANAGEMENT AMERICA CORP. a/k/a EMPIRE MANAGEMENT, and FRED SHALOM**, is bound to pay any and all expenses and attorney's fees and the costs and disbursements thereof.

WHEREFORE, defendants, **NEW HANG DAR CONSTRUCTION, INC. and JIMMY HO**, demand judgment against the plaintiff as follows:

(a) dismissing plaintiff's complaint, together with the costs and disbursements of this action;

(b) in the alternative, and in the event that plaintiff prevails, the defendants, **NEW HANG DAR CONSTRUCTION, INC. and JIMMY HO**, demand judgment determining the respective percentage of fault on the part of the defendant and plaintiffs, thereby reducing the amount of damages as against the answering defendant by the respective percentage of fault of the plaintiffs.

Dated: Elmsford, New York
May 14, 2008

By: _____
James M. Skelly (JMS/4844)

**MARKS, O'NEILL, O'BRIEN
& COURTNEY, P.C.**
Attorneys for Defendants
**NEW HANG DAR CONSTRUCTION,
INC. and JIMMY HO**
530 Saw Mill River Road
Elmsford, New York 10523
(914) 345-3701
File No.: 495.81794

TO: **ROBERT G. LEINO, ESQ.**
Attorney for Plaintiff
LAMIS ALKHARSA
354 East 91st Street, Apt. 1101
New York, New York 10128
(212) 289-8357

BRIAN ILL DEVELOPMENT, LLC
Not Yet Answered

BRIAN ILL
Not Yet Answered

MADALEX, LLC
Not Yet Answered

SCOTT EDELSTEIN
Not Yet Answered

ALEX TEREZ

Not Yet Answered

EMPIRE MANAGEMENT AMERICA CORP.

a/k/a EMPIRE MANAGEMENT

Not Yet Answered

FRED SHALOM

Not Yet Answered

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
 : ss:
COUNTY OF WESTCHESTER)

GINGER HUNTER, being duly sworn, deposes and says: deponent is not a party to this action, is over 18 years of age and resides in Elmsford, New York.

On the 22nd day of May, 2008, deponent served the within **ANSWER TO COMPLAINT**, upon the parties herein stated below, by depositing and mailing same in a sealed envelope, with postage prepaid thereon, in an official depository of the U.S. Postal Service within the State of New York, at the following addresses:

TO: **ROBERT G. LEINO, ESQ.**
Attorney for Plaintiff
LAMIS ALKHARSA
354 East 91st Street, Apt. 1101
New York, New York 10128
(212) 289-8357

BRIAN ILL DEVELOPMENT, LLC
Not Yet Answered

BRIAN ILL
Not Yet Answered

MADALEX, LLC
Not Yet Answered

SCOTT EDELSTEIN
Not Yet Answered

ALEX TEREZ
Not Yet Answered

EMPIRE MANAGEMENT AMERICA CORP.
a/k/a EMPIRE MANAGEMENT
Not Yet Answered

FRED SHALOM
Not Yet Answered

Sworn to before me on this
22nd day of May, 2008.

GINGER HUNTER

NOTARY PUBLIC